

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RUBEN J. ESCANO;

CASE NO.:

Plaintiff,

v.

[formerly Sixth Judicial District for
Grant County, New Mexico
Case No. D-608-CV-2021-305]

HOLIDAYS NETWORK GROUP, LLC;
and JORGE BRAVO; and DOES 1 through
100;

Defendants.

_____ /

NOTICE OF REMOVAL

Defendant Holidays Network Group, LLC (“Holidays”) hereby removes Case No. D-608-CV-2021-305, District Court, Sixth Judicial District, in and for Grant County, New Mexico, to the United States District Court, District of New Mexico, pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446, and as grounds for removal state as follows:

I. Background

1. On December 23, 2021, Plaintiff Ruben J. Escano (“Plaintiff”) filed a Complaint in the District Court for the Sixth Judicial District, in and for Grant County, New Mexico, styled *Ruben Escano v. Holidays Network Group, LLC, et al.*, Case No. D-608-CV-2021-305 (the “State Court Action”). A true and correct copy of the Complaint and other papers served upon Holidays is attached hereto as **Exhibit “A”**.

2. The Complaint asserts causes of action against Holidays and Defendant Jorge Bravo (“Bravo”) for purported “automatically-dialed and unsolicited telemarketing calls” alleged to violate the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (the “TCPA”).

3. On December 29, 2021, Holidays was served via its registered agent with a copy of the Complaint.

4. Holidays has not taken any action in the State Court Action.

5. Pursuant to the Summons accompanying the Complaint, Holidays must respond to the Complaint within thirty (30) days after service.¹

6. Holidays now timely removes the State Court Action to this Court.

II. Basis for Jurisdiction

7. This Court has jurisdiction over this removed matter pursuant to 28 U.S.C. §§ 1331 and 1441(a). This action could have been originally filed in this Court pursuant to 28 U.S.C. § 1331, as this Court has original jurisdiction over all civil actions arising under the “Constitution, laws, or treaties of the United States.”

8. Plaintiff’s Complaint asserts violations of a federal law, namely the TCPA. *See generally* Ex. A. The Supreme Court of the United States in *Mims v. Arrow Financial Services LLC*, 132 S. Ct. 740, 747-53 (2012), addressed the issue of whether the federal district courts have jurisdiction over TCPA claims, holding that such a claim is, in fact, one that “arises under” the laws of the United States. As such, this Court has federal question jurisdiction over this matter.

9. Indeed, pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by

¹ During communications between Plaintiff and Holiday’s counsel on January 25, 2022, Plaintiff consented to an extension of time until February 4, 2022, for Holidays to respond to the Complaint.

the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” Thus, this Court has federal question jurisdiction.

10. Based upon the foregoing, this Court has federal question jurisdiction over this action and venue is proper in this Court for purposes of removal.

11. Plaintiff’s alleged claims in the State Court Action arise pursuant to federal law, i.e., the TCPA, 47 U.S.C. § 227 *et seq.* See generally Compl. Thus, this action states a basis for original subject matter jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. § 227 *et seq.*, and, therefore, this removal is pursuant to 28 U.S.C. § 1441(a).

III. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

12. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all “process, pleadings, and orders” from the State Court Action available to Holidays have been attached to this Notice of Removal. See Ex. “A”.

13. Holidays is the only defendant “properly joined and served” who must join in or consent to the removal of the action pursuant to 28 U.S.C. § 1446(b)(2)(A). See Docket from State Court Action, a true and correct copy of which is attached hereto as **Exhibit “B”**.

14. Removal is timely in accordance with 28 U.S.C. § 1441(b)(2). Specifically, this removal has been filed within thirty (30) days of service of the Complaint upon Holidays.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) and 1446(a) because the United States District Court for the District of New Mexico is the federal judicial district embracing the District Court for Grant County, New Mexico.

16. Pursuant to 28 U.S.C. § 1446(d), Holidays will promptly file a copy of this Notice of Removal in the State Court Act and give written notice of the removal to Plaintiff.

17. As required by 28 U.S.C. § 1446(a), copies of all state court process and pleadings actually served upon Holidays are attached to this Notice of Removal as Exhibit “A”.

18. By this Notice of Removal, Holidays does not waive any objections it may have as to service, jurisdiction, or venue, or any other defenses or objections it may have to this action, and Holidays intends no admission of fact, law or liability by this Notice and expressly reserves all defenses, motions, and/or pleas.

ACCORDINGLY, pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446, this Court has jurisdiction over this matter, and Defendant Holidays Network Group, LLC hereby removes this action from the District Court, Sixth Judicial District, Grant County, New Mexico, to this Court.

Dated: January 27, 2022

/s/ Steven J. Lucero
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 27, 2022, a true and correct copy of the above and foregoing was furnished via email and First Class Mail upon Pro Se Plaintiff Ruben J. Escano at rubenescano@gmail.com and 2311 Ranch Club Road, Suite #2-180, Silver City, NM 88061.

/s/ Steven J. Lucero
Steven J. Lucero, Esq.